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STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF DENTISTRY  
DOCKET NO.

In the Matter of the Suspension :  
or Revocation of the License of :  
MARK S. HIRSCH, D.D.S. :  
To Practice Dentistry in the :  
State of New Jersey :

Administrative Action  
FINAL DECISION AND ORDER

This matter was opened to the New Jersey State Board of Dentistry ("Board") upon receipt of an Investigative Report from the Enforcement Bureau, Division of Consumer Affairs which disclosed that Mark S. Hirsch, D.D.S., had prescribed, purchased under fictitious names and personally used certain controlled dangerous substances for his own purposes unrelated to the practice of dentistry and that his conduct represented a relapse of his drug addiction. In resolution of the above-mentioned charges a Consent Order was filed with the Board in which Respondent stipulated to the truth and accuracy of certain factual statements and agreed to the entry of same into the record of the formal hearing in the above captioned matter proceeding on May 20, 1992 before the board. (A copy of the consent order is attached hereto as Exhibit "A.")

Respondent had previously appeared before the board on July 1, 1987 pursuant to an application by the Attorney General filed on June 23, 1987 for an temporary order suspending the license of the

respondent to practice dentistry based on a Verified Complaint which alleged that from April 1984 through February 1987 respondent wrote 79 prescriptions for Percocet or Percodan, each prescription ranging between 12 and 24 dosages, in the names of others for his personal consumption for non-dental reasons. When Respondent appeared before the Board on July 1, 1987, he admitted that he had suffered from an addiction to Percodan and/or Percocet since 1981 and that he obtained these medications by writing fictitious prescriptions for his own consumption, that he suffered a relapse subsequent to his completion of an in-patient drug rehabilitation program at the Carrier Foundation in March 1987. He also acknowledged that he had written prescriptions for a friend he met while a patient at Carrier. An order was entered on July 4, 1987 temporarily suspending the license of the respondent pending a plenary hearing on the Administrative Complaint, which suspension was stayed so long as the respondent complied with prescribed supervisory and monitoring conditions concerning his drug use. On December 20, 1987 a consent order was entered by the Board suspending Respondent's license to practice dentistry in the State of New Jersey for three years, of which 30 days were to be active and the balance suspended, requiring respondent to submit to unannounced urine/blood testing, attend support groups, continue in therapy, imposed costs to the State in the amount of \$6,143.22 and assessed a civil penalty in the amount of \$5,000, payment of which was to be suspended so long as respondent was in compliance with the order. Respondent satisfactorily completed the comprehensive drug monitoring program, including the urine testing, during the entire period of

probation which terminated on December 19, 1990 and has held a plenary license to practice dentistry without restriction since that time.

Commencing on or about March 1991 respondent again began to write prescriptions in his name and/or in the names of others for Vicodin, Percocet and Percodan, all controlled dangerous substances, for his own consumption. Respondent has continued to abuse Vicodin, Percocet and Percodan by writing at a minimum fifty (50) prescriptions for these Controlled Dangerous Substances in his name and/or in the names of others. On April 14, 1992 respondent was interviewed in the presence of his counsel by Investigator Cindy Gohl as well as representatives of the Drug Enforcement Agency and the Middlesex County Prosecutor's office. At that time he admitted that he had written the above described prescriptions and that he was consuming from five to thirty-five tablets of the controlled dangerous substances (mainly Vicodin) per day and that he had practiced dentistry at times when he consumed these drugs. Respondent surrendered his DEA registration to the DEA investigators that day.

A mitigation hearing was held on May 20, 1992 before the Board. Deputy Attorney General Kathy Rohr appeared on behalf of the Attorney General. Joseph Benedict, Esq. appeared for the respondent. The Attorney General did not offer any recommendation on penalty.

Board members Arnold Graham, D.D.S., Samuel E. Furman, D.D.S., Marvin Gross, D.D.S., Jerome Horowitz, D.D.S., Theresa S. Brisbin, R.D.H., Stephen Barbell, D.D.S., and Mrs. Evelyn Salkin join in this decision and order; Stephen J. Candio, D.D.S., and Laurence S. Lefkowitz, D.D.S. dissenting.

### DISCUSSION

The following documentary items are part of the record in this matter.

S-1 Consent Order entered December 20, 1987

S-2 Interim Order

The Board also included in the record all prior pleadings and Board Orders entered in regard to the respondent.

The respondent testified on his own behalf before the Board. He stated that sometime in February or March, 1991 his DEA registration was reinstated and almost immediately he began to use it for personal use. He admitted to writing at a minimum fifty (50) prescriptions for controlled dangerous substances for personal consumption and also purchasing from drug wholesale distributors two bottles of Vicodin consisting of 100 dosage units each and personally consuming most of these drugs as well. Respondent testified that there were occasions when he would ingest 35 dosage of narcotics daily for five consecutive days. During the time he was consuming these drugs he practiced dentistry. While impaired he would experience mood swings and conceded that it was possible that his impaired ability marred his judgment with respect to his treatment of patients. The respondent admitted that at the time he began to abuse drugs again he was aware that he could have received help from the support groups he had been involved with during his period of probation but chose not to.

Frederick Rotgers, Psy.D., staff clinician for the Impaired Dentists Program, Center of Alcohol Studies, Rutgers University

testified that during the Board's investigation of this matter, he met with respondent on April 9, 1992 to develop a program to treat his drug abuse problem. Dr. Rotgers recommended that respondent have random weekly urine monitoring and attend a minimum of three self-help meetings weekly. At the time of the hearing on mitigation, respondent was attending only two meetings weekly. Dr. Rotgers characterized the respondent's relapse which lasted approximately a year as not uncommon for an individual with his drug use history nor was it uncommon, according to Dr. Rotgers, for such an individual to experience a series of relapses. Dr. Rotgers characterized respondent as being highly tolerant to drugs. Such an individual, while impaired, would be capable of routine tasks but it would be difficult for him to function in any situation requiring a rapid and clear judgment such as a dental practice.

#### FINDINGS OF FACT

Based on the evidence, the Board makes the following findings of fact:

1. Respondent Mark S. Hirsch, D.D.S., is and, at all times pertinent hereto, was a dentist licensed in the State of New Jersey.

2. Respondent entered into a consent order wherein he stipulated to certain factual statements which were entered into the record of the formal hearing on May 20, 1992. Accordingly, the Board finds as facts and incorporates hereby by reference all of the factual statements contained in the consent order.

3. Respondent prescribed and dispensed to himself a minimum of fifty (50) prescriptions for Vicodin, Percocet and Percodan

(controlled dangerous substances) and ordered two bottles of Vicodin from a drug wholesale distributor all for his own personal consumption without any dental justification.

4. Respondent had his DEA privileges restored in late February or early March 1991 and at that time began to write prescriptions for controlled dangerous substances in his name and/or in the name of others for Vicodin, Percocet and Percodan (controlled dangerous substances) for his own use. This conduct continued until sometime in February 1992. During this time, Respondent was consuming anywhere from five (5) to thirty-five (35) tablets of the controlled dangerous substances per day and there were occasions when he consumed thirty-five tablets of these drugs for five consecutive days.

5. Respondent practiced dentistry during the time he was consuming these drugs.

6. Respondent's volunteering to participate in a drug treatment program occurred after he became aware that the Board was investigating him.

#### CONCLUSIONS OF LAW

The Board finds that respondent's prescribing approximately 50 prescriptions for controlled dangerous substances and his ordering of controlled dangerous substances for personal consumption for non-dental cause constitutes dishonesty, fraud, deception, and misrepresentation in violation of N.J.S.A. 45:1-21(b), repeated acts of professional misconduct in violation of N.J.S.A. 45:1-21(e) and indiscriminate prescribing of controlled dangerous substances without

good cause in violation of N.J.S.A. 45:1-13. Respondent's employment of fraudulent means to obtain controlled dangerous substances for personal consumption is a gross abuse of respondent's license to practice dentistry. Such conduct is even more egregious when it involves a licensed health care professional who has been granted one of the State's most trusted privileges - the authority to prescribe and dispense controlled dangerous substances. Drug abuse is rampant in this country and for a health professional to abuse his prescription privileges for his own use violates the public trust. This is the second time that the respondent has appeared before the Board for the unauthorized prescribing, dispensing and consumption of controlled dangerous substances. The fact that respondent as a health professional was cognizant of the dangers of the side effects resulting from the consumption of controlled dangerous substance and continued to practice dentistry while impaired is one of the most disturbing circumstances of this case. Respondent's conduct in commencing to prescribe and dispense drugs to himself for personal consumption immediately after receiving his DEA permit and to practice dentistry while under the influence of drugs compels the Board to conclude that the respondent cannot be trusted to recognize his own limitations or exercise any internal controls or appropriate judgment in the event of a personal relapse. Most tellingly, there is no recognition by respondent that his conduct posed a clear threat to his patients during the time when he personally consumed drugs. These factors have a profound impact on the Board's duty to protect the safety and welfare of the public.

The authority to practice dentistry in the State of New Jersey is a privilege not to be taken lightly. The fact that respondent is a repeat offender causes the Board to view this matter with grave concern and to conclude that leniency is not appropriate at this time. Drug diversion by professionals is a serious problem in this State and the Board is duty bound to deter such unlawful conduct by its licensees. It is therefore obliged to impose serious disciplinary sanction in furtherance of its duty to assure confidence in the integrity and competence of licensees to those individuals who seek dental services.

IT IS THEREFORE ON THIS 3<sup>rd</sup> DAY OF JUNE 1992

ORDERED THAT:

1. The license of respondent Mark S. Hirsch, D.D.S. to practice dentistry in the State of New Jersey shall be and is hereby revoked effective July 1, 1992. Respondent shall immediately thereafter surrender his wall certificate and license to the Board.

2. Until July 1, 1992 Respondent cannot undertake treatment of new patients or institute new treatment of existing patients and he must continue to participate in the Impaired Dentists Program.

3. The Board shall not entertain any petition for reinstatement of the license to practice dentistry of respondent prior to five (5) years from July 1, 1992.

4. During the period of time in which respondent's dentistry license remains revoked, respondent shall not own or otherwise maintain a pecuniary or beneficial interest in a dental practice or function as a manager, proprietor, operator or conductor



of a place where dental operations are performed or otherwise practice dentistry within the meaning of N.J.S.A. 45:6-9.

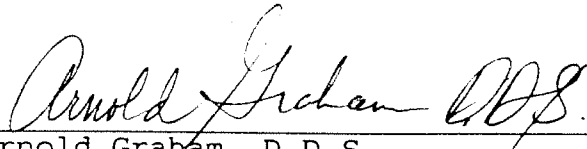
5. Respondent will be assessed costs to the State for these proceedings. The amount of costs shall be provided to the respondent in writing by certification of the Executive Director of the Board of Dentistry. Upon receipt of such affidavit, respondent shall submit a certified check or money order in the stated amount of costs made payable to the State of New Jersey no later than thirty (30) days after receipt of the affidavit of the Executive Director.

6. Prior to consideration of any application for reinstatement of licensure, respondent shall have the burden to demonstrate to the Board that he is personally fit and competent to resume the practice of dentistry. Prior to making such application, the respondent shall, at a minimum be prepared to demonstrate the following:

- a. Continued regular participation in the Impaired Dentists Program including regular unannounced urine monitoring and regular participation in drug counselling throughout the revocation period.
- b. He shall submit to an evaluation by Dr. Frederick Rotgers of the Impaired Dentists Program. He shall cause Dr. Rotgers to submit a written evaluation to the Board setting forth a comprehensive evaluation of the respondent and making recommendations concerning continued participation in the Impaired Dentists Program

including such monitoring procedures as therapy, support groups, random unannounced urine monitoring and other rehabilitative programs and procedures as recommended and/or required.

7. Upon successful petition for reinstatement, for the first year following relicensure, respondent shall practice only under the direct supervision of a licensed dentist approved by the Board subject to such conditions as the Board may deem warranted.

  
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Arnold Graham, D.D.S.  
Vice President, Board of Dentistry

Arnold Graham, D.D.S.  
11 Andrea Drive  
Fairfield, New Jersey 07006

Dear Dr. Graham

Re:

Enclosed please find original and two copies of Final Decision and Order in the above-captioned matter. Kindly review it and if it meets with your approval date ~~it~~ on page 8 and sign ~~it~~ on page 10 and return all copies to me for filing.

*all copy*